IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

OP.No. 6922 of 2003(Y)

PETITIONER:

THE EDAKOCHI SERVICE CO-OPERATIVE BANK LTD. NO.116, REPRESENTED BY ITS SECRETARY EDAKOCHI P.O., KOCHI-682 006.

BY ADV. SRI.A.V.XAVIER
SRI.JOLLY JOHN

RESPONDENTS:
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1. LABOUR COURT, ERNAKULAM.

2. SRI.K.L.LEO, KAVALAKKAL HOUSE, EDAKOCHI, KOCHI-682 006.

BY GOVERNMENT PLEADER SRI.SURARSHAN
SRI.P.RAMAKRISHNAN
SRI.A.JAYASANKAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.12122/2003 IN OP. NO.6922/2003

DISMISSED

12.1.2007 **SD/- S.SIRI JAGAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER DT.18.5.89 BY THE JOINT REGISTRAR, CO-OP.SOCIETIES, ERNAKULAM.

EXT.P2:- COPY OF THE REFERENCE ORDER DT.5.8.91.

EXT.P3:- COPY OF THE CLAIM STATEMENT DT.20.11.91 IN I.D. NO.148/91.

EXT.P4:- COPY OF THE WRITTEN STATEMEN. DT.15.6.2 IN I.D. 148/91.

EXT.P5:- COPY OF THE AWARD DT.28.11.94 IN ID. 148/91.

EXT.P6:- COPY OF THE JUDGMENT OF HIGH COURT OF KERALA DT.25.11.98 IN OP. NO.20457/98.

EXT.P7:- COPY OF THE ORDER OF JOINT REGISTRAR DT.6.1.99 GRANTING EXEMPTION

EXT.P8:- COPY OF THE ORDER OF THE JOINT REGISTRAR DT. 24.9.99 REGULARISING SERVICE OF LIJA.

.EXT.P9:- COPY OF THE WAGE DETAILS TO K.L. LEO DURING THE PERIOD 5.8.95. TO 30.6.98.

EXT.P10:- COPY OF THE CLAIM PETITION DT. 28.1.97 FILED BY THE 2ND RESPONDENT IN OP.53/97.

E.XT.P11:- COPY OF THE OBJECTION DT. 16.6.98 FILED BY THE PETITIONER IN CP. 53/97.

EXT.P12:- COPY OF THE CLAIM PETITION DT,28.7.98 FILED BY THE 2ND RESPONDENT IN CP. 60.98.

EXT.P13:- COPY OF THE CALCULATION STATEMENT FILED BY THE 2ND RESPONDENT DT. JUNE 2000 IN CP.60/98.

EXT.P14:- COPY OF THE OBJECTION TO THE CALCULATION STATEMENT EXT.P13 FILED BY THE PETITIONER DT.13.2.2001.

EXT.P15:- COPY OF THE COMMON ORDER DT.26.11.2002 PASSED BY THE 1ST RESPONDENT IN CP. 53/97 ANDCP.60/97.

/TRUE COPY/

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S. SIRI JAGAN, J.

O.P. No. 6922 OF 2003 Y

Dated this the 12th day of January, 2007

J U D G M E N T

The petitioner is a Co-operative Society. The issue involved in this original petition as to whether the 2nd respondent is entitled to the amount awarded as per Ext.P15 order in CP Nos.53/97 and 60/98 as ordered by the Labour Court, Ernakulam. The facts necessary for disposal of the original petition are as follows:

2. The 2nd respondent was an employee on daily wages of the petitioner Society. He raised an industrial dispute alleging denial of employment. In that ID, by Ext.P5 award, the Tribunal while finding denial of employment, directed the management to apply to the Co-operative Department to get sanction in absorbing the workman in the regular service of the management society and to regularize service of the 2nd respondent. The society did not challenge the said award. The award is dated 28.11.1994 which was published in the gazette dated 20.6.1995. They applied to the Registrar of Co-operative Societies for approval of regularization of the service of the 2nd respondent workman. Pursuant to directions of this court in Ext.P6 judgment, the Joint Registrar of Co-operative Societies, Ernakulam accorded sanction for

regularizing the service of the 2nd respondent in the cadre of salesman with effect from 7.4.1988. Alleging that the petitioner society did not pay him arrears of wages in accordance with Ext.P5 award and Ext.P7 the petitioner filed CP Nos.53/97 and 60/98 before the Labour court, Ernakulam, which culminated in Ext.P15 common order, whereby the petitioner was directed to pay to the 2nd respondent an amount of Rs.47,264/- towards arrears of salary and arrears of bonus for the period from 20.7.1995 to 31.12.1996 as claimed in CP No.53/97 and Rs.56,012/- as arrears of salary and arrears of bonus for the period from 1.1.1997 to 30.6.1998 as claimed in CP No.60/98. This Ext.P15 common order in the two Claim Petitions is under challenge in this original petition.

2. The contention of the petitioner is that as per Ext.P13 calculation statement, the 2nd respondent has claimed arrears with effect from 15.8.1983, which has been granted by the Labour court illegally. According to the petitioner, the 2nd respondent is entitled to arrears of wages and bonus only from the date of Ext.P7 namely, 6.1.1999 and not any time before.

3. On the other hand, the learned counsel for the 2nd respondent would submit that going by Ext.P5 award although back wages were disallowed it was held that the 2nd respondent is entitled to continuity of service taking into account his casual engagement, which

was with effect from 1983 and that is why the 2nd respondent has claimed arrears with effect from 1983.

4. I have considered the rival contentions in detail.

5. I am of opinion that the contentions of both sides are wrong. By Ext.P7 the services of the 2nd respondent was permitted to be regularized with retrospective effect from 7.4.88. Admittedly, the 2nd respondent was working all the time or at least by virtue of Ext.P5 award he must be deemed to have been working all the time from 1983 onwards. But his pay in the regular scale of pay applicable to salesman has to be fixed with effect from 7.4.88 in view of Ext.P7 order. Thereafter, progressively his pay has to be calculated for every year taking into account his increment as well as the revision of scales of pay if any. Calculating as such, the 2nd respondent's pay has to be fixed as on 20.7.95 which is the date of coming into force of Ext.P5 award. The difference between what the petitioner had been getting from that date and the salary fixed as on 20.7.95 as above would be the amount due to him from 20.7.95 onwards till 30.6.98 taking into account further increments as well as revision of pay, if any, in between. Apparently, going by Ext.P15 that is not the way the Labour court has calculated the amounts due to the 2nd respondent. In the above circumstances, I set aside Ext.P15 order and remand CP Nos.53/97 and 60/98 to the Labor court for fresh calculation of the amounts due to the 2nd respondent as

directed above. Both the parties would be entitled to file calculation statements or produce evidence in support of their calculation. The Labour court shall dispose of the Claim Petitions within a period of two months from the date of receipt of a copy of this judgment.

The original petition is disposed of as above.

(S. SIRI JAGAN, JUDGE)

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S. SIRI JAGAN , J.

OP No.6922/03y

J U D G M E N T

12th January, 2007